**Editor's note: 81 I.D. 602**

INTERMOUNTAIN EXPLORATION COMPANY

IBLA 74-237 Decided September 27, 1974

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting application for modification of coal lease SL 050641.

Affirmed.

1. Coal Leases and Permits: Leases

Under 43 CFR 3524.2-1, an application to modify a coal lease without competitive bidding, to include contiguous coal deposits, will be denied if it is determined and not controverted that the additional lands requested can be developed as part of an independent operation or that there is a competitive interest in them.

APPEARANCES: H. Byron Mock, Esq., Mock, Shearer and Carling, Salt Lake City, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Intermountain Exploration Company appeals from a decision of the Utah State Office, Bureau of Land Management, issued February 15, 1974, rejecting appellant's amended application for modification of its coal lease.

On December 6, 1938, the lease for 160 acres was originally issued to Mary Hortense Larsen, Administratrix of the Estate of Lawrence H. Larsen, deceased, and Leroy Rigby. Following a series of assignments, the Bureau of Land Management approved appellant as holder of the lease on May 10, 1973. In its request for modification, filed August 6, 1973, appellant applied for an extension of the lease to include an additional 2364.40 acres. 1/ Appellant explained:

> The small size of the lease precludes the modern development of the coal mine on a basis of efficient large-tonnage underground productions. For long range production and mine planning, and for arranging for orderly growth of the operation, it is necessary for additional coal reserves to be available to this mine. Prospecting Permit Applications U-15240 and U-15241 were acquired so that necessary exploration work could be performed and adequate reserves established. After we had purchased the interests in such applications, the Department of Interior policy of rejecting all exploratory permit applications took effect. We have appealed the rejections since we must obtain additional reserves and are willing to make the necessary exploration expenditures. Therefore we ask our lease to be extended to cover most of the lands covered by the prospecting permit applications.

1/ In a letter dated March 21, 1974, from the State Office to appellant's attorney, the State Director noted that appellant, by letter of August 3, 1973, had requested extension or modification of the lease for land describing 2400 acres. The State Director explained that upon review it was determined the land described actually totaled 2364.40 acres.

In a memorandum from the Director, Geological Survey, to the Utah State Director, Bureau of Land Management, the Geological Survey recommended that the requested modification be rejected, stating:

> It is the opinion of the Geological Survey that the lands requested by modification can be developed as an independent operation and that there is a competitive interest in them. Therefore, the modification as requested does not meet the provisions for modification under section 3 of the Mineral Leasing Act.
>
> Also, since the mine on the leased lands has been idle for several years, the provision under section 4 of the Act which allows modification when the mine will be worked out in 3 years is not applicable.

This recommendation was incorporated into the State Office decision rejecting the application, which decision sets forth the following:

> Your application for modification of Coal Lease SL 050641 which was filed in this office August 6, 1973, is rejected for the reasons that: (1) it fails to meet the requirements of Sec. 3 of the Mineral Leasing Act [30 U.S.C. § 203 (1970)] for modification, since the lands applied for can be developed independently and there is a competitive interest in them; and (2) the mine on the leased lands has been idle for several years; therefore, Sec. 4 of the Act [30 U.S.C. § 204 (1970)], which allows modification of a lease if the mine will be worked out in 3 years, is not applicable.

The notice of appeal filed March 15, 1974, contained the following statement of reasons:

> The decision was non-responsive to the application which was the request for extension of the 160 acre lease for additional acreage to create an economic sized unit as prescribed by the regulations. If less than the total amount of acreage applied for will provide such[,] that is acceptable. The appellant had

> sought to obtain coal permits [2/] which he could explore at his expense to obtain the additional acreage required, but such permit applications were rejected without substantive review. The only procedure available to the applicant to obtain lands which are unproved and which must be explored was by the procedure suggested here, namely, extension of the lease under the pertinent regulations.

[1] Departmental regulation 43 CFR 3524.2-1 is specific as to when a lessee may obtain modification of his coal lease. The section provides in part:

> § 3524.2-1 Coal.
>
> (a) Under section 3 of the Act -- (1) Application. Under section 3 of the Act (30 U.S.C. 203), a lessee may obtain a modification of his lease to include coal lands or coal deposits contiguous to those embraced in his lease if the authorized officer determines that it will be to the advantage of the lessee and the United States. The lessee shall file his application for modification in duplicate in the proper land office, describing the additional lands desired, the needs and reasons for and the advantage to the lessee of such modification.
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> (2) Availability -- (i) Noncompetitive. Upon determination by the authorized officer that the modification is justified and that the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the land or deposits as he shall prescribe.
>
> (ii) Competitive. If however, it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them, they will be offered as provided in subpart 3520.

2/ These applications for permits were not included in the case file. We note, however, that Order No. 2952, (38 F. R. 4682) precludes the issuance of any new coal prospecting permits pending preparation of a program for more orderly development of the nation's coal resources. Joan Walstrom, 15 IBLA 401 (1974).

> (b) Under section 4 of the Act -- (1) Application. Under section 4 of the Act (30 U.S.C. 204) upon satisfactory showing by the lessee that all of the workable deposits of coal within a tract covered by the lease will be exhausted, worked out or removed within 3 years thereafter, an additional tract of land or coal deposit may be leased. Application shall be filed in duplicate in the proper office and shall contain a description of the lands requested, estimated recoverable reserves, future plan of operation for such reserves and for any lands requested and the proposed method of entry into such lands.
>
> (2) Availability. If the lands or coal deposits of any part thereof are found to constitute an acceptable leasing unit, they will be offered for leasing as provided in subpart 3520. If the applicant be the successful bidder and the additional lands can be practicably operated with the applicant's leasehold as a single mine or unit, the additional lands may be included in a modified lease.

Appellant does not deny that the lands can be developed independently; nor does he deny that there is a competitive interest in the lands; 3/ nor does he allege that the mine will be worked out in three years. In the absence of any clear and definite showing that the determinations of the Geological Survey -- as to independent development and competitive interest -- were not properly made, the determination will not be disturbed. McClure Oil Company, 4 IBLA 255 (1972). Appellant's allegation that additional lands are necessary to make his leasehold an economic entity is thus immaterial under the regulation. For these reasons, it is necessary to deny the appeal. 4/

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3/ Under Western Slope Carbon, Inc., 5 IBLA 311 (1972), an application to modify a coal lease to include additional deposits will be denied if the additional lands can be developed independently or if there is a competitive interest in them.

4/ In appellant's amended application there is no request for any acreage less than the 2364.40 acres. In the Bureau's "Case Briefing Report" there is a notation dated December 12, 1973, that the Bureau

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Utah State Office is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

(Fn. 4 Cont.)
was advised by the U.S.G.S. that if the request for modification were for only 80 or 120 acres, it would probably recommend approval, i.e., W 1/4 SW 1/2 sec. 25, or E 1/2 NE 1/4 sec. 26. While this decision is not intended to foreclose any proper application for such reduced acreage, approval thereof may only be granted if the parcel qualifies under section 3524.2-1.